

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE
APRIL 18, 2023**

ITEM 5

SUBJECT

CONSIDERATION OF A PROPOSED ORDER PREPARED BY THE ADMINISTRATIVE HEARINGS OFFICE (AHO) ON THE PETITION FOR RECONSIDERATION BY THE CITY OF STOCKTON (STOCKTON OR CITY) OF STATE WATER BOARD ORDER WR 2022-0176, WHICH DENIED AND, IN THE ALTERNATIVE, CANCELED STOCKTON'S WATER RIGHT APPLICATION 30531B.

DISCUSSION

Background

On October 3, 2023, the State Water Board adopted Order WR 2022-0176, which denied and, in the alternative, canceled water right Application 30531B of the City of Stockton for a permit to appropriate water from the San Joaquin River.

Order WR 2022-0176 denied Application 30531B without prejudice pursuant to California Code of Regulations, title 23, section 840 based on evidence that Stockton does not intend to initiate the construction necessary for diversions and use of water diverted under any permit issued on Application 30531B within a reasonable time or to diligently prosecute such construction or such use of water, and because Stockton does not have a feasible plan for development or construction of the project.

Order WR 2022-0176 canceled Application 30531B without prejudice pursuant to Water Code section 1276 because Stockton did not provide information requested by the Division of Water Rights that was necessary to support Stockton's application.

The denial and cancelation of Application 30531B does not prevent Stockton from filing a new application for a permit to appropriate water. Stockton may do this when Stockton has a feasible plan for development or construction of the project and is ready and able to proceed with construction of works and beneficial use of the water it seeks to appropriate.

Petition for Reconsideration

On November 11, 2022, Stockton filed a petition for reconsideration of Order WR 2022-0176. In its petition for reconsideration, Stockton raises the following arguments:

- a) California Code of Regulations, title 23, section 840, subdivision (a), is not a basis to deny Application 30531B (A30531B) because the City has spent approximately \$25 million to construct a portion of the additional diversion

facilities it must construct to ultimately divert A30531B water under [any permit granted on] that application;

- b) Substantial evidence indicates that the City will proceed [with its proposed project] within a reasonable time, and therefore California Code of Regulations, title 23, Section 840, subdivision (b) is not a basis for denying A30531B; the City currently has both a feasible plan in place and the financial resources needed to construct additional facilities required to be constructed prior to actual diversion and use of A30531B water;
- c) Water Code section 1276 is not a basis to cancel A30531B because the City has complied with requests for additional information received from the State Board to further the processing of A30531B;
- d) It is inefficient and counterproductive for the State Board to cancel A30531B because of:
 - i. The severe financial hardship presented by the expenditure of at least \$500,000 in municipal funds required to file a new application; and
 - ii. The extraordinary length of lead time required for processing and approval by the State Board of a new application.

(Pet. for Reconsideration, p. 2.)

Stockton requests that the Board rescind Order WR 2022-0176 and maintain Application 30531B with a reduced maximum diversion volume of 33,600 acre-feet per year.

Proposed Order

If adopted by the Board, the proposed order would deny the City of Stockton's petition for reconsideration.

The proposed order concludes that there is no reasonable likelihood that Stockton will have a greater demand for water than it will be able to meet with its existing supplies for several decades, and that the lack of demonstrated demand supports denial and cancelation of Application 30531B. The proposed order further explains that Stockton's construction of oversized water diversion facilities is not, in itself, sufficient to demonstrate that Stockton would initiate construction of the additional works necessary to divert and use water under any permit issued on Application 30531B within a reasonable time. The proposed order also concludes that Stockton has not demonstrated that it has a feasible plan for development or construction of additional infrastructure necessary to divert and use water under any permit issued on Application 30531B.

The proposed order rejects Stockton's arguments that it complied with requests for information under Water Code section 1275 from the Division of Water Rights because Stockton has not initiated the development of a project-specific environmental review

document or other necessary planning documents to support Application 30531B or identified a specific date, substantiated by evidence of Stockton's intent to diligently pursue the project, to begin developing such documents.

Finally, the proposed order addresses Stockton's arguments about financial hardship and loss of priority and explains that Stockton's arguments for "good cause" to allow additional time for it to initiate and complete its planning processes directly conflict with the fundamental principle of California water law that prohibits reservation of a priority date while an applicant determines when and whether it will undertake a proposed water-supply project.

POLICY ISSUE

Should the State Water Board adopt the Proposed Order?

FISCAL IMPACT

The activity is budgeted within existing resources and no additional fiscal demands will result from adoption of the Proposed Order.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The AHO recommends that the State Water Board adopt the proposed order.